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IN THE

Supreme Court of the United States

October Term, 1955

No.

PENNSYLVANIA RAILROAD COMPANY and BROTHERHOOD OF RAILROAD TRAINMEN, *Petitioners,*

v.

N. P. RYCHLIK, individually and on behalf of and as representative of other employees of the Pennsylvania Railroad, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above-entitled case on January 9, 1956.

CITATION TO OPINIONS BELOW

The opinion of the District Court, printed as Appendix A hereto (*infra,* p. 1a), is reported at 128 F. Supp. 449. The opinion of the Court of Appeals, printed as Appendix B hereto (*infra,* p. 14a), is reported at 229 F. 2d 171.

JURISDICTION

The judgment of the Court of Appeals was entered on January 9, 1956. This petition for a writ of certiorari was filed on April 4, 1956, less than 90 days after the entry of the judgment below. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Does a District Court of the United States have jurisdiction to review the merits of a decision of a System Board of Adjustment, established under Section 3, Second of the Railway Labor Act, in a dispute arising under a union shop agreement solely because representatives of the labor organization representing employees of the carrier are members of such System Board and participate in such decision?

2. Does a District Court of the United States have jurisdiction to review the merits of the decision of a System Board of Adjustment that a labor organization is "national in scope" within the meaning of Section 2, Eleventh (c) of the Railway Labor Act, where Section 3, First (f) of the Railway Labor Act provides an available administrative procedure for final determination of such question, and where such labor organization has failed to follow such available administrative procedure for final determination of its status?

STATUTES INVOLVED

Pertinent provisions of the Railway Labor Act, 45 U. S. C. Secs. 152, 153, are set forth in Appendix C to this petition, p. 20a, *infra*.

STATEMENT OF THE CASE

On January 28, 1955, respondent filed a complaint in the United States District Court for the Western District of New York against the petitioner Pennsylvania Railroad Co. and the petitioner-intervenor Brotherhood of Railroad Trainmen.

It was alleged that on March 26, 1952, the Pennsylvania and its employees represented by the Brotherhood entered into a union shop agreement, as permitted by Section 2, Eleventh of the Railway Labor Act (R. 8). This agreement provided that, as a condition of their continued employment, these employees must become members of the Brotherhood and maintain membership in good standing, except under specified circumstances (R. 15). The agreement also provided that the requirement of Brotherhood membership was not applicable to employees "who maintain membership in any one of the other labor organizations, national in scope, organized in accordance with the Railway Labor Act" (R. 16).

Having been a member of the Brotherhood in good standing, respondent resigned his membership in February, 1953, and became a member of the United Railroad Operating Crafts (UROC), which he believed in good faith to be a railroad union national in scope (R. 12). Respondent, together with other similarly situated employees, was then cited for non-compliance with the union shop agreement (R. 4-5). He was given a hearing under the agreement before the System Board of Adjustment on or about August 27, 1953, but decision was postponed (R. 12-13). Respondent joined the Switchmen's Union of North America, a union recognized to be national in scope, on July 31,

1954, and has been a member in good standing since that date (R. 6). Evidence of that membership was presented at a further hearing before the System Board on August 23, 1954 (R. 13, 21).

The complaint further alleged that on January 3, 1955, respondent received a letter from the System Board notifying him of the Board's decision that he had not complied with the union shop agreement and that membership in UROC does not constitute compliance with the agreement (R. 13, 21). On or about January 13, 1955, he was notified by the Pennsylvania that he was "out of service" (R. 13-14), a notice that was later confirmed by letter (R. 14). Unnamed fellow employees of respondent also received such notification of their discharge (R. 14).

It was also alleged that after respondent and his unnamed fellow employees had allowed their membership in the Brotherhood to lapse in 1953, they applied for reinstatement. This application was denied by the Brotherhood even though a tender of membership dues had been made (R. 5-6, 8).

On the basis of the foregoing allegations, the complaint asked the District Court to restrain the Brotherhood and the Pennsylvania from continuing the discharge or suspension of respondent and his unnamed fellow employees until they have been given an opportunity for reinstatement or membership in the Brotherhood under the same terms or conditions available to other members (R. 10-11), and from enforcing the union shop agreement to terminate their employment (R. 11). It was charged that their discharge, following the Brotherhood's refusal to reinstate them, was contrary to Section 2, Eleventh (a) of the Railway

Labor Act (R. 6). And since respondent was a member in good standing of the Switchmen's Union since July 31, 1954, his discharge was said to violate Section 2, Eleventh (c) of the Act (R. 6).

The complaint also charged that the union shop agreement was invalid under the Railway Labor Act in that (1) under the Act a System Board of Adjustment does not have jurisdiction over union shop disputes, (2) the Act and general principles of law are violated when the collective bargaining agent, the Brotherhood, is represented on the System Board, and (3) the provisions of the union shop agreement purporting to make the System Board's decisions final and binding are contrary to the Act (R. 8-10). The Brotherhood, in its representation on the Board, was said to be the "accuser, judge, and jury, in respect to the employees' right to work, all of which is in direct conflict with settled principles of American jurisprudence" (R. 9).

The District Court, on petitioners' motion, dismissed the complaint for failure to state a cause of action (R. 42-44). In its opinion (R. 29-41, Appendix A hereto, *infra*, pp. 1a-13a), the court noted that the complaint was silent as to the proceedings before the System Board and no request had been made to review such proceedings. Such a review, even when requested, was held not to extend to the merits of the decision but only to the Board's procedure, the scope of the decision, and factors of fraud or corruption—all matters untouched by the complaint. The court further held that the union shop agreement was valid and that representation of the collective bargaining agent on the System Board did not per se make the agreement in-

valid. It was noted that the complaint contained no allegation of discrimination by a Board member.

The District Court further held that under the Act and the union shop agreement continued membership in a qualified union is a condition of continued employment. The Brotherhood's denial of reinstatement to respondent was held not to be a ground for judicial intervention and respondent's affiliation with the Switchmen's union did not excuse his prior failure to maintain membership in a qualified union.

Finally, the District Court held that the pleadings made it unnecessary to determine the status of UROC and whether membership therein constituted compliance with the union shop agreement. It was noted that determination of whether UROC was a union "national in scope" was left to specific administrative procedure under the Railway Labor Act.

The Court of Appeals for the Second Circuit reversed the judgment of the District Court and remanded the case for trial on the merits. 229 F. 2d 171; Appendix B, p. 14a, *infra*. It held that the System Board of Adjustment had jurisdiction over the matter under Section 3, First (i) of the Act as a dispute growing out of the interpretation or application of agreements concerning working conditions. But it held that the representation of the Brotherhood on the System Board made that Board's determination suspect because of the Brotherhood's presumptive bias against UROC, a competing union whose status as an organization "national in scope" was at issue. And it felt that this supposed bias was not remedied by a proceeding under Section 3, First (f) whereby a three-man board—composed of a representative of qualified

unions, a representative of the union claiming to be "national in scope", and a third member chosen by the National Mediation Board—decides whether the applicant union is "national in scope" and hence is entitled to be an elector of unions representing employees in panels of the National Adjustment Board. Thus the District Court was held to have jurisdiction to review the merits of the System Board's determination.

REASONS FOR GRANTING THE WRIT

1. The decision of the Court of Appeals for the Second Circuit in this case is in direct and admitted conflict with the decision of the Court of Appeals for the Sixth Circuit in *Pigott* v. *Detroit, Toledo & Ironton R. Co.* 221 F. 2d 736, certiorari denied, 350 U.S. 833. Fundamentally this conflict involves the reviewability or non-reviewability in court of a System Board decision and involves the availability of a proceeding before a three-man board selected pursuant to Section 3, First (f) as a remedy for any supposed bias by the System Board of Adjustment in determining whether a union is "national in scope".

In the *Pigott* case, the Court of Appeals for the Sixth Circuit held that the procedure outlined in Section 3, First (f) "insures a fair determination, by a three-member board, of the question as to the right of a labor organization to participate in the selection of the labor members of the National Railroad Adjustment Board." 221 F. 2d at 740. And in answer to the contention that such a procedure has no application to a determination whether a union is "national in scope" within the meaning of the union shop provision of the Act, the court held that "appellants are not denied due process of law where there is the right

to secure a fair determination whether their labor organization is 'national in scope' available to them, or, rather, to such labor organization, even though the administrative machinery for making such determination must be availed of in proceedings under the Act to qualify for the right to select members of the National Railroad Adjustment Board." 221 F. 2d at 740. In other words, before a union can qualify as "national in scope" within the exception to the union shop requirement it must also participate in the Adjustment Board machinery and be there recognized as an organization "national in scope". Such was said to be the intention of the drafters of the union shop amendment to the Railway Labor Act.

Judge Hand in writing the opinion below, conceded that the *Pigott* decision "is flatly in favor of the defendants at bar (petitioners), and if the appeal is to succeed, we must interpret the Act differently, or declare it unconstitutional." 229 F. 2d at 174; Appendix B, p. 17a, *infra.* And in its ensuing discussion, the court below construed the Act in a manner completely inconsistent with that adopted by the Court of Appeals for the Sixth Circuit. The court below held that a board of three, selected in accordance with Section 3, First (f) might leave undecided the question whether the applicant union was "national in scope" and hence would not necessarily provide the essential impartial determination. Moreover, said the court below, the union claiming to be "national in scope" might not desire to be an elector for purposes of the National Railroad Adjustment Board; the employee would thus forfeit his right to have an impartial tribunal decide whether he should hold his job. Accordingly, the Act should be construed as granting the employee the

personal privilege of proving his rights through an impartial judicial tribunal rather than being dependent on the uncertain possibility that his union will indirectly assert such rights.

Judge Hand also recognized that the decision below is contradicted by the opinion of the Court of Appeals for the Seventh Circuit in *U.R.O.C.* v. *Pennsylvania Railroad Co.*, 212 F. 2d 938, where full recognition was given to the availability of the procedure specified in Section 3, First (f) of the Act, in the event a System Board should determine that a union was not "national in scope" for purposes of the union shop provision.

The existence of the conflict between the decision below and the *Pigott* and *Pennsylvania* decisions warrants the grant of a writ of certiorari to resolve the differing statutory interpretations.

2. The case raises important and novel problems in the administration of the Railway Labor Act that merit review by this Court.

The interpretation of Section 2, Eleventh of the Act adopted by the court below creates an individual cause of action in federal courts which seems inconsistent with the intention of the drafters of that statutory provision. Section 2, Eleventh was enacted by Congress in 1951 as an amendment to the Act and authorized the inclusion of a union shop requirement in collective bargaining agreements. This section, however, excepts employees who belong to certain other unions from the necessity of joining the organization of the bargaining representative. And in defining such qualified alternative unions, the authors of this amendment incorporated into Section 2, Eleventh the

identical qualifications as had originally been set out in Section 3, First (a). This latter section describes which labor organizations are qualified to participate in the selection of labor representatives to the National Railroad Adjustment Board. In both sections the labor organizations must be national in scope and must be organized in accordance with the Act.

Section 2, Eleventh, however, remains silent as to the manner in which these qualifications are to be determined for purposes of the union shop provision. In contrast, Section 3, First (f) provides a specific administrative procedure before a special three-man board for the precise purpose of determining the qualifications of a union seeking to select representatives on the National Railroad Adjustment Board. It would thus seem clear that the drafters of Section 2, Eleventh, in incorporating the qualifications set forth in Section 3, First, must also have intended to adopt the provisions of Section 3, First, for purposes of determining those qualifications.

The findings of these special three-man boards are made "final and binding" by the terms of Section 3, First (f). Thus their findings as to whether a union is "national in scope" and is organized in accordance with the Act are to be accorded finality. And by reference to established doctrines, courts will not exercise jurisdiction over those matters which Congress has committed to the exclusive jurisdiction of agencies created by the Railway Labor Act. *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U. S. 239; *Order of Railway Conductors* v. *Southern Railway Co.*, 339 U. S. 255; *Order of Railway Conductors* v. *Pitney*, 326 U. S. 561; *Switchmen's Union* v. *National Mediation Board*, 320

U. S. 297; *General Committee* v. *M. K. T. R. Co.*, 320 U. S. 323.

To permit an individual to invoke the jurisdiction of a federal district court to decide the issue as to whether a union is "national in scope" is thus to invade the exclusive jurisdiction over that issue which Congress gave to the special three-man boards under Section 3, First (f). The position adopted by the court below in this case rejects the basic assumption of the Railway Labor Act that family quarrels in the railroad industry should be settled exclusively within the confines of the structures erected by the Act. It opens the door to a variety of judicial interpretations as to whether a particular union is "national in scope", thereby dooming the desirable degree of uniformity which is attainable only within the statutory procedures.

Moreover, the decision below is not confined in its reach to matters involving the status of unions as "national in scope". The language used by the court in describing the presumptive bias of System Boards of Adjustment would seemingly justify invoking the aid of a federal district court whenever an individual who did not belong to the bargaining agent was aggrieved by a System Board determination. A veritable Pandora's box would thereby be opened, throwing into the federal district courts a host of issues arising out of interpretations and disputes as to collective bargaining agreements and working conditions. Here again the basic assumption of the Act—the exclusiveness of the Act's procedures—would be grossly violated.

This Court has held that "in view of the pattern of this legislation and its history the command of the

Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforceable in the courts should be implied." *General Committee* v. *M.K.T.R. Co.*, 320 U. S. 323, 337. Since the decision below creates important and unwarranted exceptions to that principle, review by this Court becomes essential.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit should be granted.

Respectfully submitted,

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